THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.16793 of 1994

Date: .01.2006

Between:

K.Venkat Rao and 3 others ... Petitioners

And

The Sports Authority of A.P. and 2 others..... Respondents

Counsel for the petitioners : Sri K.Raghuveer Reddy

Counsel for respondents : Sri K. Janardhan Rao

Sri G.P. for Tourism

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.16793 of 1994

ORDER:

The petitioners, four in number, challenge the proceedings of the 2nd respondent dated 4.8.1994, and the consequential proceedings of the 1st respondent dated 24.8.1994, as illegal and arbitrary, seek a direction from this Court to the respondents to extend them the benefit of the revised scale of pay of Rs.2690-4440 and for other consequential benefits, arrears of salary etc.

Facts, to the extent necessary for this writ petition, are that the petitioners were employed in the Sports Authority of Andhra Pradesh, a body corporate under Act IV of 1988. While the 1st and 2nd petitioners were appointed as coaches in the year 1971, the 3rd and 4th were appointed in the year 1970 and 1972 respectively. While petitioners 1 to 3 were promoted as Grade I Coaches on 1.7.1982, the 4th petitioner was promoted as Coach Grade I with effect from 15.6.1974. The scale of pay attached to the post of Coach Grade I, at the relevant time, was Rs.2410-4050. Though there was no post of Deputy Director, in existence, before the statutory rules came into force, one Sri Khursheed Ali was appointed as a Deputy Director in the scale of pay of Rs.2690-4440.

On the ground that they had been entrusted with administrative work and were discharging the functions of a Deputy Director and as they had completed ten years of service as Coaches Grade-I, the petitioners submitted a representation, to the Vice-Chairman and Managing Director of the Sports Authority of Andhra Pradesh, to extend them the benefit of the scale of pay of Rs.2690-4440, the scale of pay of a Deputy Director. The Vice-chairman, vide proceedings dated 24.11.1992, sought clarifications from the 2nd respondent as to whether extension of scales of pay granted in favour of Sri Khursheed Ali was in order and if so whether the petitioners could also be granted similar scales of pay. In reply thereto, the 2nd respondent Government, vide memo dated 21.4.1993, directed the Vice-Chairman and Managing Director, Sports Authority of Andhra Pradesh to take a decision in the matter as per rules regarding grant of pay scales of Rs.2590-4300 to the petitioners who were working in administrative posts. Similar benefit was directed to be extended to four other coaches who were seniors to the petitioners. The Vice-chairman was also requested to take an appropriate decision for recovery of the excess amount paid to Sri Khursheed Ali due to wrong fixation of pay. It is necessary to note that the said memo of the government dated 21.4.1993 relates to sanction of higher scale of pay on completion of 10 years of service.

Subsequently the government, vide memo dated 4.8.1994, after referring to G.O.(P) 2 dated 4.1.1988, informed the 1st respondent that the proceedings issued earlier on 16.7.2003 was erroneous, had been issued without examining

the rules and were therefore set aside. The 1st respondent was directed to take immediate action to recover the excess amount erroneously paid to the petitioners, on the basis of the revised fixation of pay. Consequent to the proceedings of the government dated 4.8.1994, the 1st respondent, vide proceedings dated 24.8.1994, informed the petitioners that the earlier proceedings dated 16.7.1993 were wrongly issued without examining the rules and were therefore set aside. The petitioners were informed that the proceedings dated 16.7.1993 were cancelled and that the excess amount drawn and paid to them was being recovered duly re-fixing their pay in the ordinary scale. It is these proceedings, dated 04.08.1994 and 24.08.1994, which are the subject matter of challenge in this writ petition.

While the basis of challenge of the impugned memos in the writ petition, was on the ground of violation of principles of natural justice, Sri K. Raghuveer Reddy, learned counsel for the petitioner, would fairly submit that the petitioners were not entitled for the special grade pay scale of Rs. 2590-4300 since G.O.P.(2) dated 4.1.1988 was applicable only to officers upto the scale of pay of Rs. 2150-3690 whereas the petitioners, even as Coaches Grade I, were in the higher pay scale of Rs. 2410-4050 ever since 1.7.1986.

Sri K.Raghuveer Reddy, learned counsel for the petitioners, would refer to the statutory rules, notified in G.O.Ms.No.25 dated 4.5.1993, wherein at Appendix II are given the scales of pay for different posts. For the post of Deputy Director (Technical), the applicable scale of pay is Rs.2690-4440. Learned Counsel would contend that while the petitioners were erroneously fixed in the pay scale of Rs. 2590-4300, they ought to have instead been fixed in the higher pay scale, of Rs. 2690-4440, in accordance with the rules, more so since the said pay scales were accorded to Sri Khursheed Ali. In so far as the order of recovery of the excess amount paid to Sri Khursheed Ali is concerned, learned counsel would strenuously contend that Sri Khursheed Ali was permitted to retire pursuant to the order of this Court in W.P.No. 2799 of 1994 dated 07.08.1996 on reaching the age of superannuation of 60 years and that the salary paid to him in the scale of pay of Rs.2690-4440 was not recovered and he was paid the terminal benefits in the same scale of pay of Rs. 2690-4440. Learned counsel would invoke the doctrine of “equal pay for equal work” and contend that the petitioners, having being appointed and made to discharge the

duties of Deputy Directors, cannot be denied the scales of pay applicable to the said post and that the action of the respondents, in not extending benefits similar to the one given to Sri Khursheed Ali, was discriminatory and in violation of the Articles 14 and 16 of the Constitution of India. Learned counsel would refer to several proceedings to show that the petitioners had discharged the functions of Deputy Directors.

Sri K. Janardhan Rao, learned Standing Counsel for the 1st respondent Sports Authority of Andhra Pradesh, would refer to the relief sought for in the writ petition and submit that it is in two parts. Learned Counsel would submit that the impugned proceedings dated 04.08.1994 and 24.08.1994 relate to grant of special grade scale of pay to such employees of the corporation who have completed ten years of service. Extension of the special grade scale of pay is applicable only to such employees whose maximum scale of pay is Rs.2150-3690 and since the petitioners, at the relevant time, were admittedly in the higher scale of pay of Rs.2410-4050 they were not entitled for the special grade scale of pay prescribed in G.O.(P) 2 dated 4.1.1988. In so far as the second limb of the relief sought for is concerned, learned Standing Counsel would submit that the petitioners were not entitled to the scale of pay of Rs.2690-4440, (pre-revised), as applicable to the post of Deputy Directors, since the post of Deputy Directors was a post twice removed and higher than that of Coaches Grade-I. Learned Standing Counsel would submit that under the statutory rules, promotion from the post of Coaches grade I is firstly to the post of Assistant Director and from the post of Assistant Director promotion is to the next higher post of Deputy Director. According to the learned Standing Counsel, since both the posts of Assistant Director and Deputy Director, are selection posts, a selection process is prescribed under the statutory rules and eligible Coaches grade I could only have been considered and promoted to the posts by a duly constituted selection committee. Learned Standing Counsel would submit that the petitioners, unlike Sri Khursheed Ali, were not promoted to the posts of Deputy Director and were merely re-designated by a change in the nomenclature. He would place before this Court the relevant note file, in support of his contention that while re-designated the petitioners as Deputy Directors the 1st respondent had decided to address the 2nd respondent with regards payment of scales of pay. According to the learned Standing Counsel

since the 1st respondent corporation is, under the Act and Rules, bound by the directions given by the government and since the government had specifically directed that the petitioners were not entitled even to the scales of pay of Rs. 2590-4300, the 1st respondent could not have given them the benefit of the higher scale of pay of Rs.2690-4440. Learned Standing Counsel would submit that the petitioners cannot claim to have been promoted to the post of Deputy Director and cannot take advantage of their being re-designated, and that any promotions made contrary to the statutory rules is illegal and *abinitio* void. He would submit that, unlike the petitioners, Sri Khursheed Ali was appointed and promoted to the post of Deputy Director as is clear from the order of appointment dated 23.04.1986, and that the petitioners could not compare their cases with that of Sri Khursheed Ali. According to the learned Standing Counsel even if it were be held that Sri Khursheed Ali was illegally, and in violation of the statutory rules, promoted as Deputy Director, the petitioners cannot seek a direction from this Court to have the illegality perpetuated. He would contend that an illegal order can neither result in discrimination nor can it form the basis for making claims for being conferred similar illegal benefits. Learned Standing Counsel would submit that the judgment of this Court, in W.P.No. 2799 of 1994 dated 07.08.1996, merely required the 1st respondent to continue Sri Khursheed Ali in service upto the age of 60 years and as there was no direction from this Court to extend the scale of pay of Rs.2690-4440 to Sri Khursheed Ali, the 1st respondent was entitled, to recover the excess amount paid to Sri Khursheed Ali. Learned Standing Counsel would however fairly submit that the excess amount paid to Sri Khursheed Ali, in the scale of pay of Rs.2690-4440, was not recovered from him and that he was permitted to retire from service and was given the terminal benefits in the scale of pay of Rs. 2690-4440.

Before examining the rival contentions, it is necessary to take note of the relevant statutory provisions. The A.P. Sports Authorities Act 1988 (A.P. Act No. 4 of 1988) is an Act to provide for the establishment of Sports Authorities for promotion of Games and Sports in the State of Andhra Pradesh and for matters connected therewith or incidental thereto. Act 4 of 1988 extends to the whole of the State of Andhra Pradesh and came into force on the 1st day of

November 1987. Chapter II of Act 4 of 1988 relates to establishment of State Sports Authority and under Section 3(1) there shall be established by the Government, by notification for the State of Andhra Pradesh, an Authority by the name of "The Sports Authority of Andhra Pradesh". Under Section 3(2) the Sports Authority of Andhra Pradesh shall be a body corporate having perpetual succession and a common seal. Section 4 relates to the powers and functions of the Sports Authority. Section 6 relates to the powers and functions of the Vice-Chairman and Managing Director. Section 22 empowers the government to give such directions, to any authority constituted under the Act, as it may consider necessary in the interest of sports and games or physical education. Section 23 confers powers on the government to make rules for carrying out all or any of the purposes of the Act.

In exercise of the powers conferred under Section 23 of A.P. Act 4 of 1988, the A.P. Sports Authorities Rules 1993, (hereinafter called as 1993 Rules), were made and notified in G.O.Ms.No. 25 dated 04.05.1993. These rules, which extend to the whole of the State of Andhra Pradesh, came into force retrospectively from the 1st day of November 1987. Rule 2(d) thereof defines "cadre" to mean the strength of a service or part of service sanctioned as a separate unit. Rule 2(q) defines "Pay" to mean the pay admissible on the relevant date and includes special pay, personal pay, dearness pay etc. Rule 2(s) defines "Sanctioning Authority" to mean the Authority competent to sanction posts and the Authority with which the power to accord sanction rests with. Rule 2(t) defines "Selection Committee" to mean the Committee appointed with the approval of the Governing Body for selection of persons for appointments to posts specified in Annexure-I. Rule 2(u) defines, "Senior Posts" to mean Officers posts. Rule 3 relates to grades and categories of posts and under sub-rule (1) thereof, under the Sports Authority of A.P, there shall be Grades and Categories as specified in Appendix-I and as revised from time to time by the Sports Authority. Rule 3(2) provides that the Sports Authority, subject to the superintendence of the Government, may direct creation or abolition of a grade or category of any post, the maximum of the scale of which does not exceed Rs.4,500/-. In respect of posts exceeding this limit prior approval of the Government is necessary. Under Rule 4(1) the Vice Chairman and Managing Director shall be the appointing authority in respect of senior

posts. Rule 5 relates to sanction of posts and thereunder the Sports Authority is competent to accord sanction for the creation of posts with the prior approval of the Government and appointment of staff can be made only against these sanctioned posts. Rule 6 relates to classification of posts as Senior Posts, Junior Posts and Last Grade Posts. Under Rule 6(1), Senior Posts are those carrying a scale of pay of Rs.1330-2630 and higher scales. Rule 9 relates to the methods of recruitment and includes, under sub-rule (2), by promotion. Rule 17(1) provides that appointment to Senior Posts, by promotion, shall be made by the Vice-Chairman and Managing Director. Rule 18 relates to recruitment by promotion and sub-Rule 3, 4 and 8 thereof read as under:

3). The Departmental Promotion Committee shall be constituted with the following officers:

i. V.C. & M.D., SAAP. : Chairman

ii. Deputy Secretary to Govt., E.G. & Y.S. Department: Chairman.

iii. Director, SAAP : Member

iv. Deputy Director, (T): Member

v. Administrative Officer: Member.

4). Only cases of employees who possess the prescribed qualifications and who completes five years of service in a Grade/post shall be eligible for consideration for promotion to the next higher grade/post.

8). i). There is no direct recruitment to posts of Deputy Director (Tech), Assistant Director (Tech), Coach Grade-I or Coach Grade-II;

ii). Coach Grade-III, after satisfactory completion of probation and after acquiring a pass in the Accounts Test for Executive Officers and after putting in total service five years in this post is eligible for consideration for promotion to post of Coach Grade-II;

iii). After putting in 5 years of service in the post of Coach Grade-II he is eligible for consideration for the promotion to the post of Coach Grade-II he is eligible for consideration for the promotion to the post of Coach Grade-I;

iv). After putting in service of 5 years of service in the post of Coach Grade-I he is eligible for consideration for promotion to the post of Assistant Director (Tech); and

v) after putting in service of 5 yeas of service in the post of Assistant Director (Tech) he is eligible for consideration for promotion to the post of Deputy Director (Tech).

Chapter V of the Rules relates to “Pay” and under Rule 27 the scales of pay,

for the posts under the Sports Authority, shall be as prevalent in the State Government from time to time. Rule 28 relates to initial pay and under sub-rule (1) thereof, an employee shall, on his appointment to a post on a time scale of pay, draw pay at the minimum stage of the time scale. Appendix-I includes under item (2) the post of Deputy Director (Technical) in the scale of pay of Rs.2690-4440 and under item (4) Coaches Grade-I in the scale of pay of Rs.2410-4050.

The note file and current file placed before this Court, by the learned Standing Counsel, would show that the 1st respondent, vide proceedings dated 23.04.1986, had promoted and appointed Sri Khursheed Ali, the senior most Grade-I Coach as Deputy Director (Technical) in the scale of pay of Rs.1400-2000 which was subsequently revised to Rs.2690-4440. Learned Standing Counsel would compare these proceedings dated 23.04.1986 to the proceedings issued to the respondents on 16.07.1993 to contend that while Sri Khursheed Ali was promoted and appointed as Deputy Director, the petitioners were not. While conceding that in the proceedings dated 23.11.1992, 16.07.1993, 04.08.1994 and 24.08.1994 the petitioners were referred to as Deputy Directors, learned Standing Counsel would refer to the note file at page 19 wherein the request of the petitioners for enhancement of their scales of pay equal to that of Deputy Directors was considered, and the Vice-Chairman and Managing Director had specifically endorsed as under:

1. We may re-designate their posts, as it is only a change of nomenclature.
2. As for scales, address letter to Secretary in Employment Generation and Youth Services.

According to the learned Standing Counsel, the petitioners were merely re-designated as Deputy Directors and, unlike Sri Khursheed Ali, were not promoted and the letter addressed to the government, with regards the scales of pay which they should be given the benefit of, cannot be construed as if the petitioners were promoted as Deputy Directors.

In so far as Sri Khursheed Ali is concerned, learned Standing Counsel would refer to the judgment of this Court inW.P. No. 2799 of 1994 dated 07.08.1996 wherein this Court, on taking note of the fact that Sri Khursheed Ali was appointed much prior to 01.11.1987, the date on which the 1993 rules came into

force with retrospective effect, held that employees who were appointed prior to 01.11.1987 were entitled to continue in office till they attain the age of 60 years. This Court directed the respondent to treat the petitioner's (Sri Khursheed Ali) age of superannuation as 60 years and, since he had already retired from 13.09.1994, after attaining the age of superannuation of 60 years, directed to finalise his monetary benefits, including the pension, as if he was entitled to continue in service upto the age of 60 years. Learned Standing Counsel would contend that the Doctrine of equal pay for equal work is not applicable and would rely on **Union of India v. Tarit Ranjan Das** wherein the Supreme Court held thus:-

"……. Further, the Tribunal and the High Court proceeded as if it was the employer who was to show that there was no equality in the work. On the contrary, the person who asserts that there is equality has to prove it. The equality is not based on designation or the nature of work alone. There are several other factors like responsibilities, reliabilities, experience, confidentiality involved, functional need and requirements commensurate with the position in the hierarchy, the qualifications required which are equally relevant".

From the records placed before this Court it is clear that the petitioners were merely re-designated as Deputy Directors by the Vice-Chairman and Managing Director of the Corporation and were neither promoted as Assistant Directors nor as Deputy Directors. It is only if they had been promoted in accordance with statutory rules, which requires a duly constituted selection committee to consider their cases for selection and promotion, would they be entitled to the scales of pay applicable to the higher post of Deputy Director. The petitioners were not so promoted and were merely re- designated as Deputy Directors, by the Vice-Chairman and Managing Director, which is not in accordance with the statutory rules. They are therefore neither entitled for the benefit of the scales of pay applicable to the post of Deputy Directors nor are they entitled to compare themselves with Khursheed Ali, who was promoted as Deputy Director. Sri K.Raghuveer Reddy, learned counsel for the petitioners, would however contend that even Sri Khursheed Ali was not promoted by a duly constituted selection committee and that the benefit which was conferred on Sri Khursheed Ali should also be conferred on the petitioners herein. While the order of appointment of Sri Khursheed Ali dated 23.4.1986 was prior to 1.11.1987, when the statutory rules came in force, the proceedings re-designating the petitioners as Deputy Directors were subsequent thereto. Once statutory rules govern the field, any appointment or promotion has to be

necessarily made in accordance with the statutory rules and not contrary thereto. Promotions effected contrary to the statutory rules would not confer any right on the promotees and such promotions must be held to be illegal. Even if Sri Khursheed Ali, as is contended by Sri K. Raghuveer Reddy, had been promoted contrary to the rules and his appointment as Deputy Director is held to be illegal, it would not enure to the benefit of the petitioners to make a similar claim, for no direction can be sought to perpetuate an illegality. In **Chandigarh Admn. v. Jagjit Singh** the Supreme Court held:

"……We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law — indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law — but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the Court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the Court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course — barring exceptional situations — would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ

jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world……..”

The petitioners are therefore neither entitled to claim that they were promoted as Deputy Directors, nor to claim the benefit of the scale of pay of Rs. 2690-4440.

Sri K.Raghuveer Reddy, learned counsel for the petitioners, would submit that the petitioners, pursuant to the interim orders of this Court, were continued in service till they reached the age of superannuation in the scale of Rs.2590-4300. He would invoke the Doctrine of equal pay for equal work and submit that grave prejudice would be caused to the petitioners if the respondents were permitted to recover the difference in emoluments between the scale of Rs.2410-4050 and Rs. 2590-4300 from their terminal benefits. I find considerable force in this submission.

It is not in dispute that the orders, redesignating the petitioners as deputy directors, were passed by the vice-chairman and managing director inasmuch as the petitioners were discharging the functions of Deputy Director, and though the scales of pay of Deputy Director, of Rs. 2690-4440, was not applicable to them, they were given the benefit of the special grade scale of Rs.2590-4300 pursuant to the orders of the government. This court, by order in W.P.M.P.20831/94 dated 30.9.1994, suspended the impugned proceedings dated 4.8.1994 for a period of four weeks. The interim order passed on 30.9.1994 was extended until further orders by order of this court dated 14.11.1994. This court, by order dated 22.9.1994 in W.P.M.P.20832/94, directed the respondents to continue to extend the pay scale of Rs.2590-4300 (pre-revised scales) to the petitioners by giving them the corresponding revised pay scales pending further orders. The petitioners retired from service, on reaching the age of superannuation, during the pendency of this writ petition. The 1st petitioner retired from service on 29.2.2004, the 2nd petitioner on 31.12.2002, the 3rd petitioner on 31.10.1999 and the 4th petitioner on 31.1.2004. Thus for more than a decade the petitioners were paid the scales of Rs.2590-

4300 and their terminal benefits were calculated, on their retirement from service, in the said scale of pay.

Since Sri K. Raghuveer Reddy would fairly concede that the petitioners were not entitled for payment of the special grade scale of pay of Rs.2590-4300, the impugned orders dated 4.8.1994 and 24.8.1994 cannot be struck down on the ground of violation of principles of natural justice, since it is well settled that admitted or undisputed facts do not require compliance with principles natural justice.

However, as contended by Sri K.Raghuveer Reddy, if the petitioner had been put on notice, with regards their being brought back to the original scale of 2510-4050, they could have placed before the competent authority, the fact that they had been discharging the functions of a Deputy Director, and that they were entitled to be paid the scales applicable to the post of Deputy Director of Rs.2690-4440. It would then have been open to the respondents to consider these submissions and pass necessary orders thereon. While it is for the petitioners, as held in **Tarit Ranjam Das**[1], to prove that the doctrine of equal pay for equal work is applicable and to establish as to how they were entitled for the scales of pay of Rs. 2690-4440, to which Deputy Directors were entitled to, it is only if they had been given an opportunity in this regard would they have been in a position to discharge this burden. Since the impugned orders, reverting the petitioners to their original scale of Rs.2410-4050, was passed without putting the petitioners on notice, it must necessarily be held that the impugned orders, which did not give the petitioners an opportunity of establishing that they are entitled for the higher scales of Rs.2690-4440, is in violation of principles of natural justice and therefore liable to be quashed.

In the normal course of events, once an order is set aside on the ground of violation of principles of natural justice, the respondents must be given the liberty to take necessary action in accordance with law. No useful purpose will however be served in now putting the petitioners on notice regarding their entitlement for the higher scale of pay of Rs.2690-4440 since they have all retired from service, one of them more than six years ago and another more than three years back. In the peculiar facts and circumstances of the present case, wherein the petitioners were admittedly discharging the functions of

Deputy Directors, were paid the higher scale of Rs. 2590-4300, which scale, in view of the interim orders of this court, were continued to be paid to them for more than a decade till they retired from service and their terminal benefits and pension were calculated on the basis of the said scale of pay, putting them on notice would have enabled them to establish their claim for the higher scale of Rs. 2690-4440 on the doctrine of equal pay of equal work, and more so, in view of the fact that despite the order of the 2nd respondent to recover the excess amount paid to Sri Khursheed Ali, the 1st respondent had not taken steps to recover the said amount from him, the contention that the respondents should now be given the liberty to take steps to recover the amount paid to the petitioners, (difference in emoluments in the scale of Rs.2590-4300 and Rs.2410-4050), from their terminal benefits cannot be accepted. The respondents are not entitled to take advantage of their earlier illegal action in issuing the impugned proceedings without putting the petitioners on notice, and without giving them the opportunity of establishing their claim for the higher scale of pay of Rs.2690-4440. Since the petitioners, like Sri Khursheed Ali, have also retired from service and since the difference in the emoluments was admittedly not recovered from the terminal benefits of Sri Khursheed Ali, it would be in the fitness of things, if the respondents refrain from doing so in the case of the petitioners also.

The impugned orders dated 04.08.1994 and 24.08.1994 are quashed and the writ petition is accordingly disposed of. However, in the circumstances, without costs.

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